



Appeal Decision

Site visit made on 1 July 2022

by Lewis Condé BSc (Hons), MSc, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 December 2022

Appeal Ref: APP/W1850/W/22/3293637

Crumplebury Farm, from Norton Lane to Whitbourne Hall, Whitbourne WR6 5SG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission under section 73 of the Town and Country Planning Act 1990 for the development of land without complying with conditions subject to which a previous planning permission was granted.
 - The appeal is made by Mr Joe Evans against the decision of Herefordshire Council.
 - The application Ref 210640, dated 16 February 2021, was refused by notice dated 30 September 2021.
 - The application sought planning permission for Demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites without complying with conditions attached to planning permission Ref 163902, dated 3 August 2017.
 - The conditions in dispute are Nos 5 and 16 which state that:
 - (5) 'This permission shall enure for the benefit of Mr J & Mrs J Evans only and not for the benefit of the land or any other persons interested in the land'.
 - (16) 'No amplified or other music shall be played in the premises outside the following times: 12.00hrs to 23.00 hrs'.
 - The reasons given for the conditions are:
 - (5) 'The nature of the development is such that it is only considered acceptable in this location having regard to the applicant's special circumstances having regard to Policy SD1 of the Herefordshire Local Plan Core Strategy and the National Planning Policy Framework'.
 - (16) 'In order to protect the amenity of occupiers of nearby properties and to comply with Policy SD1 of Herefordshire Local Plan - Core Strategy and the National Planning Policy Framework'.
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Decision

1. The appeal is allowed in part and planning permission is granted for demolition of 5no. existing redundant agricultural outbuildings to facilitate expansion of existing restaurant and following events facilities: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites at Crumplebury Farm, from Norton Lane to Whitbourne Hall, Whitbourne WR6 5SG, in accordance with the terms of the application, Ref 210640, dated 17 February 2021, subject to the conditions in the attached schedule.

Preliminary Matters

2. There is no dispute between the main parties that the development approved under planning permission Ref: 163902 (the '2017 permission') has been complete. Based on the evidence before me, there is also no reason to dispute

that the 2017 permission has not been lawfully implemented. Accordingly, the appeal is determined on this basis.

Background and Main Issues

3. The National Planning Policy Framework ('the Framework') and the Planning Practice Guidance (PPG) set out that planning conditions should be kept to a minimum and only imposed where they meet the 'six tests', namely: where they are necessary; relevant to planning; relevant to the development to be permitted; enforceable; precise; and reasonable in all other respects.
4. The detailed planning history is outlined within the main parties' respective cases, as such, I do not seek to replicate it here. Simply put, planning permission was granted in August 2017 for the demolition of 5no. existing redundant agricultural buildings to facilitate expansion of an existing restaurant and following events space: Function Suite, Fine Dining Restaurant and Lounge, Conference Space and 16no. Accommodation Suites. Disputed Condition 5 restricts the benefit of the planning permission to the original applicants, which the appellant is seeking to remove. The appellant is also seeking to replace Condition 16 to enable the playing of amplified music at the site between the hours of 12.00hrs to 24.00hrs, which would effectively allow for an increase in playing time of one hour at night.
5. The Council's reason for refusal sets out that due to an absence of sufficient information, the proposed removal of Condition 5 and variation of Condition 16 would not safeguard levels of residential amenity for existing and future nearby occupiers.
6. The main issue is therefore whether the conditions are reasonable or necessary in the interest of the living conditions of neighbouring residents.

Reasons

Condition 5

7. The PPG states that planning permission usually runs with the land and that it is rarely appropriate to provide otherwise. It further highlights that there may be exceptional circumstances where development that would not otherwise be permitted may be justified on planning grounds because of who would benefit from the permission.
8. The original 2017 permission was approved under officer delegated powers. Despite reference to a 'planning balance', the officer's report indicates that the proposal was compliant with the Council's adopted development plan. In particular, the economic benefits of the proposal were highlighted and it was found to be a suitable location for a rural business use in accordance with the provisions of Policy RA6 of the Hereford Local Plan Core Strategy 2011-2031 (adopted 2015) (Core Strategy) and Policy LU9 of the Whitbourne Neighbourhood Development Plan 2011-2031 (NDP) and the Framework. It has also been brought to my attention that had the original 2017 proposal been deemed contrary to the development plan, it would have required a determination by planning committee under the Council's scheme of delegation.
9. I understand that the applicants did not propose that the original 2017 permission be personal to them. It is claimed that the original application was

promoted heavily on the basis that the applicant had a longstanding and historical relationship with the local community and a desire to enable diversification of the Whitbourne Estate. However, the original officer's report does not provide any detailed explanation as to why Condition 5 on the grant of the 2017 permission was deemed necessary. Conditions should be used to enable development to proceed where it would have otherwise been necessary to refuse planning permission. As the 2017 permission was deemed to accord with the development plan, while the PPG advises that personal permission should be used in exceptional circumstances, there is lack of robust justification associated with Condition 5.

10. I note the concerns that have been raised by third parties surrounding the potential sale of the property and that a future operator(s) may manage the facility differently, including having less regard to neighbouring residents. The Council also suggests that any intensification of business activities at the site could potentially give rise to harmful impacts, such as noise and disturbance. Indeed, the Council's reason for refusing to remove the condition is due to the potential impacts on the living conditions of neighbours. However, the current operators could themselves modify business practices to increase the level of activity at the site (within the terms of the planning permission). Any potential alternative operator would also be required to comply with the terms of the planning permission, including relevant conditions that were specifically imposed to safeguard the living conditions of neighbours (e.g. restrictions on use, delivery practices, outdoor music).
11. Through the current appeal, the Council has also highlighted that the original 2017 permission was promoted by the applicant as providing a unique business offering and dining experience. This appears likely to again stem from the links between the facility and the wider Whitbourne Estate. However, the appellant (within the terms of the planning permission) is not restricted from making changes to the business model, for example the nature of the dining experience, sourcing of products, sustainability practices etc. Furthermore, I am not convinced based on the evidence before me that the development's business offer or dining experience is so unique as to be reliant upon the appellant for its operation, or to provide associated benefits to the rural economy.
12. No exceptional circumstances have thereby been demonstrated to justify the need for the development to be restricted to the original applicants. Condition 5 is also not deemed to be reasonable or necessary in the interests of the living conditions of neighbouring residents. Therefore, its removal would not conflict with Policy RA6 of the Core Strategy. The policy, amongst other matters, promotes development that helps to diversify the rural economy where it does not cause unacceptable impacts on the amenity of nearby residents. Likewise, the proposal would also adhere to the aims of the Framework through maintaining appropriate standards of amenity.

Condition 16

13. Planning permission has previously been sought to amend Condition 16 to extend the timeframe in which amplified music can be played at the site until 24:00hrs. However, the application (ref: 194408) was refused by the Council,

with the decision, in respect of this condition, upheld at appeal in July 2021¹ (the 2021 appeal).

14. The appellant argues that comments have since been received from the Council's Environmental Health Officer (EHO). These comments detail that the proposed variation of Condition 16 would not cause a noise nuisance to neighbours, provided the appellant's noise management plan (NMP) is adhered to. It is also suggested that the appellant's NMP has been updated since the previous appeal. These matters are disputed by the Council which indicates that the current appeal scheme is not accompanied by any significant additional evidence or technical assessment beyond that submitted at the time of the 2021 appeal decision.
15. I have been provided a copy of the 2021 appeal decision by the Council and interested parties. The previous Inspector was clearly aware that the Council's EHO was broadly in agreement with the appellant with regards to the noise impacts associated with the proposal. Furthermore, matters that were highlighted in the EHO's response (dated 7th July 2021) are also addressed within the previous Inspector's report (e.g. findings of the appellant's noise report, EHO investigations at the site, details of initial noise complaints).
16. I note that several measures and mitigating factors have been put forward by the appellant to address noise concerns. These include that amplified music would be restricted to the Great Hall beyond 20:00hrs, the specific construction/noise attenuation profile of the host building, the use of acoustic curtains and a volume limiting system, the use of a ventilation and heating system in the Great Hall to avoid the opening of doors, the location and design of permitted areas of guest congregation. However, these each appear to have been covered in detail in the previous Inspector's decision.
17. Notably, the previous Inspector's concerns did not relate to the noise generated from amplified music per se. Indeed, he outlined that subject to the effective enforcement of the updated NMP the living conditions of neighbours could be safeguarded in respect of noise disturbance from the appeal premises caused by the amplified music. From the evidence before me I find no reason to reach an alternative view.
18. Instead, the Inspector deemed that the extended timeframe in which music could be played would likely lead to the later departures of guests from the venue. In turn, it was the noise associated with guests and vehicles exiting the site, at a later period, that was deemed to be harmful to the living conditions of nearby neighbours.
19. On my site visit I observed that a pair of semi-detached properties 'The Helts' located near to the appeal site's main guest car park. I understand these are Estate tenanted properties. The location of the car park and its lack of lighting is such that it would not be a natural location for guests to congregate late at night or undertake extended interactions.
20. I understand that the hosting of wedding events is a key reason for the proposed amendment of Condition 16. I am mindful that weddings, unlike many other functions, tend to have a more staggered departure of guests across the course of the event. Given the availability of on-site

¹ Appeal Ref: APP/W1850/W/21/3271872

accommodation, it is also likely that some guests would also stay overnight at the property.

21. Despite the above factors, it remains that the variation of Condition 16 would in all probability lead to later departure times for numerous guests at such events. This would be at a period when neighbours would ordinarily be sleeping and particularly sensitive to disturbance.
22. In particular due to the close relationship between 'The Helts' and the guest car park, I share the previous Inspector's concerns that noise associated with the later departure of guests is likely to harm the living conditions of nearby neighbouring residents. Even the occurrence of brief and transitory guest noise within the car park area has the potential to cause significant harm; including chatting, shouting, car door slamming, starting of engines and movements of vehicles. This is due to the timing of when the noise would occur and the otherwise rather tranquil nature of the surrounding area. I am not convinced that the measures identified within the latest NMP, including the chaperoning of guests to the car park, or annual monitoring of the NMP, would be sufficient to overcome these harmful noise impacts.
23. In coming to the above view, I recognise that Condition 16 is more stringent than the control imposed by the site's premises license, while there is a lack of objection to the proposal from the Council's EHO. Nevertheless, the level of noise and degree of disturbance required to constitute planning harms can be lower than those above which a statutory nuisance would result. Consequently, the absence of objection from the Council's EHO does not mean that the effects of noise associated with the proposal are acceptable, rather it is a matter of planning judgement. It also does not follow that Condition 16 is unnecessary or ultra vires because it conflicts with licensing controls.
24. Although the appeal is accompanied by a noise impact assessment that suggests the proposal would have no adverse impacts on local amenity, the assessment focuses specifically on the noise emissions from amplified music within the venue.
25. It has been put to me that the appellant is content for the amended condition to only allow amplified music to be played until 24:00hrs at a maximum of 12 events per calendar year. This is because it is only necessary for larger weddings/events, which are identified as not being held regularly at the venue. Be that as it may, a restriction to 12 events per year still has the potential to significantly harm the living conditions of the nearby neighbours. Additionally, in this instance, I am not satisfied such a condition would pass the 'six tests', as it is unclear why a restriction of 12 events as opposed to another particular figure would be reasonable or necessary.
26. Consequently, I find that Condition 16 of the original 2017 permission is reasonable and necessary to safeguard the living conditions of neighbouring residents. The proposed amendment to Condition 16 would therefore conflict with the aims of Core Strategy Policy RA6 and the Framework in respect of protecting residential amenity.

Other Matters

27. Concerns have been raised by third parties regarding the appellant breaching conditions associated with his planning permissions at the appeal site. This

does not affect the merits of the appeal, rather it is within the Council's gift as to whether to investigate or take any action.

Conditions

28. Allowing the appeal grants a new planning permission. The PPG advises that decision notices for the grant of planning permission under section 73 should also restate the conditions imposed on earlier permissions that continue to have effect. As the development has already commenced, it is not necessary to impose a standard time limit condition.
29. The Council has suggested a list of conditions that primarily replicates those that were attached to the previous planning permissions (Refs: 163902; 194408), albeit updated to reflect where details have previously been discharged. The appellant has reviewed the suggested conditions and has not raised issue with them.
30. Based on the Council's appeal submission, it appears that many of the conditions have been discharged. However, as I am uncertain whether some of these works have been complied with, I have still restated most of the conditions to reflect this. Where works have already been undertaken in accordance with discharged conditions that is a matter which can be addressed by the main parties.
31. Where necessary and in the interests of clarity and precision, I have made minor alterations to some of the suggested conditions to better reflect guidance contained within the PPG.

Conclusion

32. Overall, I have not found any exceptional circumstances as to why Condition 5 should be imposed, while its removal would not harm the living conditions of neighbours. However, Condition 16 of the 2017 permission remains necessary and reasonable to safeguard the living conditions of nearby neighbouring residents. Therefore, the appeal is allowed in respect of the removal of Condition 5, but with the retention of Condition 16 of the 2017 permission.

Lewis Condé

INSPECTOR

Schedule of Conditions

1. The development shall be carried out strictly in accordance with the approved plans (Drawing nos.1821/1000 Rev A, 1821/1100, 1821/3000 Rev A, 1821/3100 Rev A, 1821/3601, 1821/3602 and 1821/9001), except where otherwise stipulated by conditions attached to this permission.
2. The development shall be carried out in accordance with the approved details, confirmed under discharge of condition letter P181140/XA2 dated 30 April 2018.
3. The appeal premises shall be used as a Function Suite, Restaurant, Conference Centre and Guest Accommodation and for no other purpose (including any other purpose in Classes E, C1 and D1 of the Schedule to the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
4. The approved accommodation block building shall be used for holiday accommodation only and for no other purpose including any other purpose within Class C of the Schedule of the Town and Country Planning (Use Classes) Order 1987, or in any provision equivalent to that Class in any statutory instrument revoking and re-enacting that Order with or without modification.
5. None of the existing trees and or hedgerows on the site (other than those specifically shown to be removed on the approved drawings) shall be removed, destroyed or felled without the prior approval in writing of the Local Planning Authority.
6. Within one month of this decision the provision of passing bays on Norton Lane shall be provided in accordance with details approved under discharge of condition letter P180280/XA2 dated 27 July 2018 and subject to a Section 278 agreement.
7. The landscape design shall be carried out in accordance with decision notice P181441/XA2 dated 26 July 2018.
8. The approved soft landscaping shall be maintained for a period of 5 years. During this time, any trees, shrubs or other plants which are removed, die or are seriously retarded shall be replaced during the next planting season with others of similar sizes and species unless the Local Planning Authority gives written consent to any variation. If any plants fail more than once they shall continue to be replaced on an annual basis until the end of the 10- year maintenance period.
9. With reference to details of Arboricultural Impact Assessment and arboricultural working method statement, this shall be implemented in accordance with details confirmed under discharge of condition letter P180280/XA2 dated 27 July 2018.

10. The ecological protection, mitigation, working methods and biodiversity enhancements as recommended in the Preliminary Ecological Report by Focus Ecology dated October 2016 shall be implemented in full as stated.
11. The Protected Species (Bats) protection, mitigation, working methods and compensation scheme with required European Protected Species Licence, as recommended in the detailed bat report by Focus Ecology dated June 2017 shall be implemented in full as stated.
12. With reference to details of noise emanating from site, the development shall be carried out in accordance with the approved details, as confirmed under discharge of condition letter P180280/XA2 dated 27 July 2018.
13. The loading and unloading of service and delivery vehicles together with their arrival and departure from the site shall not take place outside the hours of 0800 to 1800 Mondays to Fridays and 0800 to 1300 on Saturdays nor at any time on Sundays, Bank or Public Holidays.
14. No amplified music shall be played in the premises outside of the following times: 12.00hrs to 23.00hrs.
15. The foul and surface water drainage arrangements shall be provided in accordance with details approved under discharge of condition letter P180280/XA2 dated 27 July 2018.
16. The floodlighting and external lighting shall be complete in accordance with the approved details, as confirmed under discharge of condition letter P181441/XA2 dated 26 July 2018.
17. Within one month of this Decision the approved car parking shall be laid out, consolidated, surfaced, marked out and drained in accordance with the approved plans. These shall thereafter be retained for this purpose for the life of the development.
18. Improvements to visibility for traffic joining Parish Lane after leaving the site, in an easterly direction, shall be implemented in accordance with details approved under discharge of condition letter P200858/XA2 dated 3 April 2020.
19. Within one month of this Decision, details including a timescale for the provision of new signage along the A44 and B4203 shall be submitted for approval in writing of the local planning authority. The signs shall be implemented in accordance with the approved details.
20. With reference to the Construction Management Plan (CMP), the agreed details shall be implemented throughout the construction period, in accordance with the approved details under discharge of condition letter P180280/XA2 dated 27 July 2018.
21. Within one month of this Decision, a revised noise management plan ('NMP') including a timescale for its implementation shall be submitted for approval in writing by the local planning authority. The revised NMP shall be based on the updated Noise Management Plan, dated 25 March 2021 and shall include

the following: a) Measures to control noise including amplified or other noise emanating from the premises (including details of maximum noise levels and the management of internal spaces and external doors); b) A process for recording and managing complaints relating to noise and disturbance; c) The management of visitors leaving the approved premises and clean-up operations, and d) A mechanism to monitor noise levels from the approved premises and to monitor and review the NMP manually. Thereafter the premises shall be operated in accordance with the approved NMP for the life of the development.

22. There shall be no use of fireworks or Chinese lanterns on the premises at any time.

23. No amplified music shall be played outside of the buildings on the premises at any time.